

1 LATHAM & WATKINS LLP
2 Michael W. De Vries (SBN 211001)
3 *mike.devries@lw.com*
4 Andrew Fossum (SBN 250373)
5 *andrew.fossum@lw.com*
6 650 Town Center Drive, 20th Floor
7 Costa Mesa, California 92626
8 Telephone: (714) 540-1235
9 Facsimile: (714) 755-8290

10 Attorneys for Plaintiff
11 SINHDARELLA, INC.

12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA

15 SINHDARELLA, INC., a California
16 corporation,

17 Plaintiff,

18 v.

19 KEVIN VU, an individual, d/b/a/ THE
20 BOILING CRAB; and DOES 1 through 10,

21 Defendants.

CASE NO. C 07-04353 WHA

Honorable William H. Alsup

**DECLARATION OF MICHAEL W. DE
VRIES IN SUPPORT OF PLAINTIFF
SINHDARELLA, INC.'S MOTION FOR
PRELIMINARY INJUNCTION**

Date: February 7, 2008

Time: 8:00 a.m.

Courtroom: 9

DECLARATION OF MICHAEL W. DE VRIES

I, Michael W. De Vries, hereby declare under penalty of perjury that:

1. I am an active member of the State Bar of California and an attorney with the law firm of Latham & Watkins LLP, counsel of record for Sinhdarella, Inc. The facts set forth herein are within my personal knowledge, and if called as a witness, I could and would testify competently thereto.
2. Sinhdarella, Inc. is the listed owner of United States Trademark Registration Number 3,256,219 for the mark THE BOILING CRAB in connection with restaurant services in International Class 43. A true and correct certified copy of Sinhdarella's trademark registration obtained from the United States Patent and Trademark Office is attached hereto as Exhibit A.
3. A true and correct copy of Defendant Kevin Vu's fictitious business name statement for the restaurant he operates under the name "The Boiling Crab" in San Jose, California is attached hereto as Exhibit B.
4. A true and correct copy of the letter that I sent via certified mail to Kevin Vu at 393 N. Capitol Ave., San Jose, CA 95133 on May 22, 2007 is attached hereto as Exhibit C.
5. A true and correct copy of the letter that I sent via Federal Express to Kevin Vu at 393 N. Capitol Ave., San Jose, CA 95133 on June 26, 2007 is attached hereto as Exhibit D.
6. A true and correct copy of the letter that I sent via messenger to Kevin Vu at 393 N. Capitol Ave., San Jose, CA 95133 on July 23, 2007 is attached hereto as Exhibit E.
7. A true and correct copy of a printout from www.yelp.com on February 20, 2007 is attached hereto as Exhibit F.
8. A true and correct copy of an email that I received from Kevin Vu cancelling the parties' scheduled Rule 26(f) Conference on September 24, 2007 is attached hereto as Exhibit G.
9. A true and correct copy of an email that I received from Kevin Vu on October 31, 2007 is attached hereto as Exhibit H.
10. During a meet and confer call on November 13, 2007, Christopher Hays, current counsel for defendant Kevin Vu, told me that he had advised his client to resume use of the name

1 "The Boiling Crab."

2 11. During a phone conversation with defendant Kevin Vu when he was not represented by
3 counsel, I asked Mr. Vu whether he was planning to open a second restaurant. He told
4 me that he had lied to his suppliers about opening a second restaurant to get better prices
5 from them.

6 12. During a phone conversation with defendant Kevin Vu when he was not represented by
7 counsel, Mr. Vu told me that Sinhdarella would not be able to collect a judgment against
8 him and that he might leave the United States to go to Vietnam if Sinhdarella were to
9 obtain a sizeable judgment against him.

10 I declare under penalty of perjury of the laws of the United States that the
11 foregoing is true and correct.

12 Executed this 27th day of December, 2007 at San Clemente, California.

13 
14 Michael W. De Vries

EXHIBIT A

1671831

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

November 28, 2007

THE ATTACHED U.S. TRADEMARK REGISTRATION 3,256,219 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *June 26, 2007*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office

L. Edelen

L. EDELEN
Certifying Officer



TBC 000063

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,256,219

Registered June 26, 2007

**SERVICE MARK
PRINCIPAL REGISTER**

THE BOILING CRAB

SINHDARELLA INC. (CALIFORNIA CORPORATION)

16130 WHITECAP CIRCLE

FOUNTAIN VALLEY, CA 927081843

FOR: RESTAURANT SERVICES, IN CLASS 43
(U.S. CLS. 100 AND 101).

FIRST USE 6-13-2003; IN COMMERCE 9-11-2003.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CRAB", APART FROM THE MARK AS SHOWN.

SER. NO. 78-954,843, FILED 8-17-2006.

KATHY DE JONGE, EXAMINING ATTORNEY

EXHIBIT B

READ INSTRUCTIONS ON REVERSE

A MAILING NAME AND ADDRESS (OPTIONAL):

NAME KEVIN VU

ADDRESS 1036 SUMMERHIST CT

CITY/STATE/ZIP SAN JOSE, CA 95122

FORM MUST BE TYPED OR LEGIBLY COMPLETED USING BLACK INK ONLY.

File Number: **478892**No. of Pages: **1**File Date: **5/31/2008**Expires: **5/31/2011**Fee Total: **37.00**Clerk ID: **020**

**BRENDA DAVIS, County Clerk Recorder
SANTA CLARA COUNTY CLERK - RECORDER'S OFFICE**

FICTITIOUS BUSINESS NAME STATEMENT - THE FOLLOWING PERSON(S) IS (ARE) DOING BUSINESS AS:

1. Fictitious Business Name(s) (Please number additional names; use an ADDENDUM form if additional room is required)
THE BOILING CRAB

2. Street Address of Principal Place of Business in California - (P.O. Box, PMS NOT acceptable)
393 N. CAPITOL AVE City **SAN JOSE** State **CA** Zip **95133**

3. Full Name of Registrant/Owner
KEVIN VU
Residence Address (P.O. Box or PMS not acceptable)
1036 SUMMERHIST CT
City **SAN JOSE** State **CA** Zip **95122**
(If a CORP, LLC, LLP, or LP, enter the State where registered)

Full Name of Registrant/Owner
Residence Address (P.O. Box or PMS not acceptable)
City State Zip
(If a CORP, LLC, LLP, or LP, enter the State where registered)

4. This business is conducted by: (PLEASE CHECK ONE BOX ONLY from each GROUP. THE REMAINING GROUP WILL NOT HAVE A BOX CHECKED)
GROUP ONE: ☒ individual ☐ husband & wife ☐ general partnership ☐ copartners ☐ joint venture ☐ business trust
☐ an unincorporated association other than a partnership ☐ OTHER (specify) _____
OR
GROUP TWO: ☐ corporation ☐ limited liability company ☐ limited liability partnership ☐ limited partnership

5. Registrant began transacting business under the fictitious business name(s) listed above ☐ on (date): _____
or: ☒ has not yet begun

6. This filing is a: ☒ First Filing (Publication Required) ☐ Refile within 40 days of expiration with no changes from the previous filing
☐ Refile with changes (Publication Required) ☐ Refile after 40 days of expiration date (Publication Required)

CURRENT / PREVIOUS FILE NUMBER _____ (REQUIRED for a refile or renewal)

I DECLARE THAT ALL INFORMATION IN THIS STATEMENT IS TRUE AND CORRECT.
(A registrant who declares as true information which he or she knows to be false is guilty of a crime.)

7A. GROUP ONE REGISTRANT sign below:
Signed X Kevin Vu
Print Full Name **KEVIN VU**

7B. GROUP TWO REGISTRANT (CORPORATION, LLC, LLP, or LP)
An officer must sign and complete the below information
Entity Name _____
Officer Signature X _____
Print Name and Title _____
Affirmation: I am a duly authorized officer of the entity and am authorized to execute this statement on its behalf.

THIS STATEMENT WAS FILED WITH THE COUNTY CLERK-RECORDER OF SANTA CLARA COUNTY ON THE DATE INDICATED ON THE FILING LABEL ABOVE

NOTICE - This Fictitious Business Name Statement expires five years
from the date it was filed in the Office of the County Clerk-Recorder.
A new Fictitious Business Name Statement must be filed before that time.

The filing of this statement does not of itself authorize the use in this state of a fictitious business name in violation of the laws of another under federal, state or common law
(see Section 14411 et seq., Business and Professions Code)

I hereby certify that this copy is a correct copy of the original
Fictitious Business Name Statement on file in my office.

Brenda Davis, County Clerk-Recorder

Deputy

EXHIBIT C

LATHAM & WATKINS LLP

May 22, 2007

VIA CERTIFIED MAIL

Mr. Kevin Vu d/b/a "The Boiling Crab"
393 N. Capitol Ave.
San Jose, CA 95133

FIRM / AFFILIATE OFFICES
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Brussels New York
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Hamburg Paris
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London San Francisco
Los Angeles Shanghai
Madrid Silicon Valley
Milan Singapore
Moscow Tokyo
Munich Washington, D.C.

File No. 043376-0000

Re: **Trademark Infringement – THE BOILING CRAB trademark**

Dear Mr. Vu:

We represent Sinhdarella Inc. d/b/a The Boiling Crab ("The Boiling Crab") in intellectual property enforcement matters.

The Boiling Crab has offered and sold restaurant services and related products and services under the trademark **THE BOILING CRAB**, including by operating restaurants specializing in Louisiana-style seafood dishes under the trademark **THE BOILING CRAB**, since at least as early as 2003. The Boiling Crab is the owner of valuable trademark rights that have contributed to its success, including the trademark **THE BOILING CRAB**. The Boiling Crab also owns United States Trademark Application Serial No. 78/954,843 for the trademark **THE BOILING CRAB** in International Class No. 43 in connection with *restaurant services*. The United States Patent and Trademark Office has reviewed The Boiling Crab's application, approved it for publication, and it is expected that a registration on this application will be issued shortly. The Boiling Crab is firmly committed to defending its valuable trademark rights.

It has come to our attention that you are operating a Louisiana-style seafood restaurant under the name **THE BOILING CRAB**, without the consent or authorization of The Boiling Crab. Photographs of your restaurant are enclosed herewith.

Your unauthorized use of our client's **THE BOILING CRAB** trademark is likely to cause confusion and constitutes: (1) trademark infringement, unfair competition, and false designation of origin in violation of 15 U.S.C. § 1125(a); (2) trademark dilution in violation of 15 U.S.C. § 1125(c); (3) trademark infringement, unfair competition, and dilution under California law and the law of other states; and (4) a violation of various other state and federal laws.

By way of this letter, The Boiling Crab demands that you, and all persons and entities affiliated with you, immediately cease and desist from any further use of the name **THE BOILING CRAB**, or of any other mark that is confusingly similar to the trademark **THE**

LATHAM & WATKINS LLP

BOILING CRAB. The Boiling Crab also demands that you immediately provide us with the following information:

1. A detailed summary of your total gross revenues from the restaurant you are operating under the trademark **THE BOILING CRAB**, from the opening of your restaurant to the present;
2. A detailed summary of your expenses from the restaurant you are operating under the trademark **THE BOILING CRAB**, from the opening of your restaurant to the present; and
3. A detailed summary of all uses by you of the trademark **THE BOILING CRAB**.

Please send me written acknowledgment by no later than **June 1, 2007** that you have complied, and will permanently comply, with these demands. So long as you do so, we will work with you to try to reach an amicable resolution of this matter. If you fail to abide by these reasonable demands, The Boiling Crab may have no choice but to protect its rights through litigation. If The Boiling Crab is forced to protect its valuable trademark rights through litigation, it will seek all available remedies, including but not limited to preliminary and permanent injunctive relief, damages, increased damages, attorneys' fees, and costs. Moreover, if you continue to use the name **THE BOILING CRAB** after receipt of this letter, such continuing use would unquestionably constitute willful infringement, thereby entitling The Boiling Crab to additional remedies in the event that litigation is necessary.

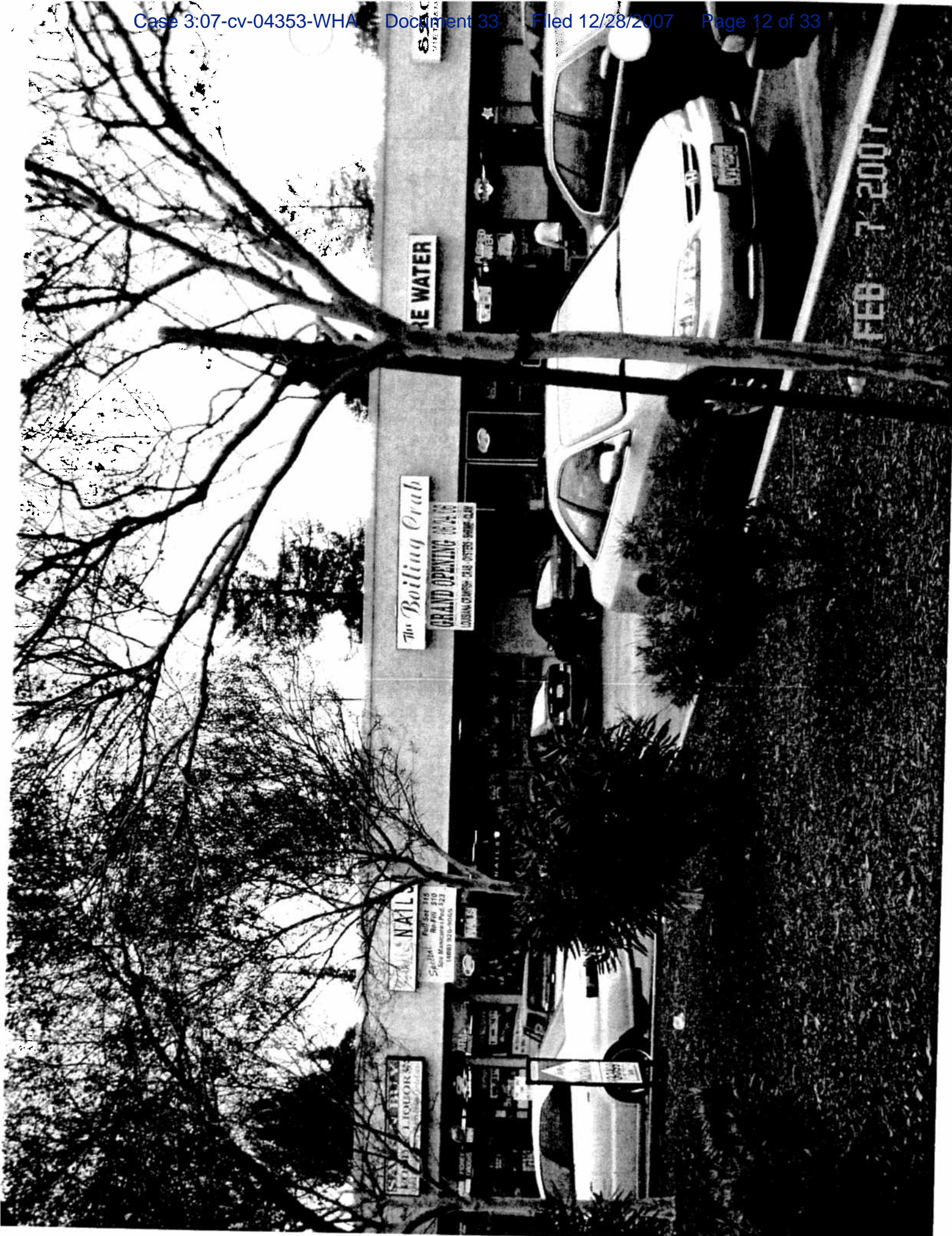
We are hopeful that you are willing to work with us to reach an amicable resolution of this matter. Nothing contained in this letter constitutes an express or implied waiver of any right or remedy, all of which are expressly reserved.

Sincerely,



Michael W. De Vries
of LATHAM & WATKINS LLP

Enclosures (photographs)



The Boiling Crab

GRAND OPENING 06/24/06

LOUISIANA CRAWFISH · CRAB · OYSTERS · SHRIMP · CLAM

FEB 7 2007

EXHIBIT D

6501 Center Drive, 20th Floor
Costa Mesa, California 92626-1925
Tel: +714.540.1235 Fax: +714.755.8290
www.lw.com

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Madrid	Silicon Valley
Milan	Singapore
Moscow	Tokyo
Munich	Washington, D.C.

June 26, 2007

VIA FEDERAL EXPRESS

File No. 038832-0001

Mr. Kevin Vu
d/b/a "The Boiling Crab"
393 N. Capitol Ave.
San Jose, CA 95133

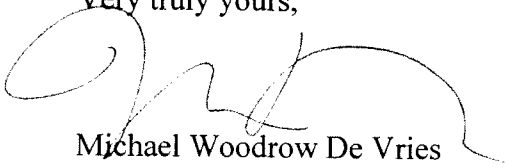
Re: **Trademark Infringement – THE BOILING CRAB trademark**

Dear Mr. Vu:

Please find enclosed an additional copy of my letter to you dated May 22, 2007, which was sent to you via Certified Mail on that date. Your prompt attention to this matter is requested. If you fail to respond to our May 22 letter and agree to the reasonable demands contained therein by July 6, 2007, we will assume you have no intention to do so and will proceed accordingly.

Nothing contained in this letter constitutes an express or implied waiver of any right or remedy, all of which are expressly reserved.

Very truly yours,



Michael Woodrow De Vries
of LATHAM & WATKINS LLP

Enclosure

LATHAM & WATKINS LLP

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Milan	Singapore
Moscow	Tokyo
Munich	Washington, D.C.

May 22, 2007

VIA CERTIFIED MAIL

Mr. Kevin Vu d/b/a "The Boiling Crab"
393 N. Capitol Ave.
San Jose, CA 95133

File No. 043376-0000

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Your unauthorized use of our client's **THE BOILING CRAB** trademark is likely to cause confusion and constitutes: (1) trademark infringement, unfair competition, and false designation of origin in violation of 15 U.S.C. § 1125(a); (2) trademark dilution in violation of 15 U.S.C. § 1125(c); (3) trademark infringement, unfair competition, and dilution under California law and the law of other states; and (4) a violation of various other state and federal laws.

By way of this letter, The Boiling Crab demands that you, and all persons and entities affiliated with you, immediately cease and desist from any further use of the name **THE BOILING CRAB**, or of any other mark that is confusingly similar to the trademark **THE**

LATHAM & WATKINS LLP


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Please send me written acknowledgment by no later than **June 1, 2007** that you have complied, and will permanently comply, with these demands. So long as you do so, we will work with you to try to reach an amicable resolution of this matter. If you fail to abide by these reasonable demands, The Boiling Crab may have no choice but to protect its rights through litigation. If The Boiling Crab is forced to protect its valuable trademark rights through litigation, it will seek all available remedies, including but not limited to preliminary and permanent injunctive relief, damages, increased damages, attorneys' fees, and costs. Moreover, if you continue to use the name **THE BOILING CRAB** after receipt of this letter, such continuing use would unquestionably constitute willful infringement, thereby entitling The Boiling Crab to additional remedies in the event that litigation is necessary.

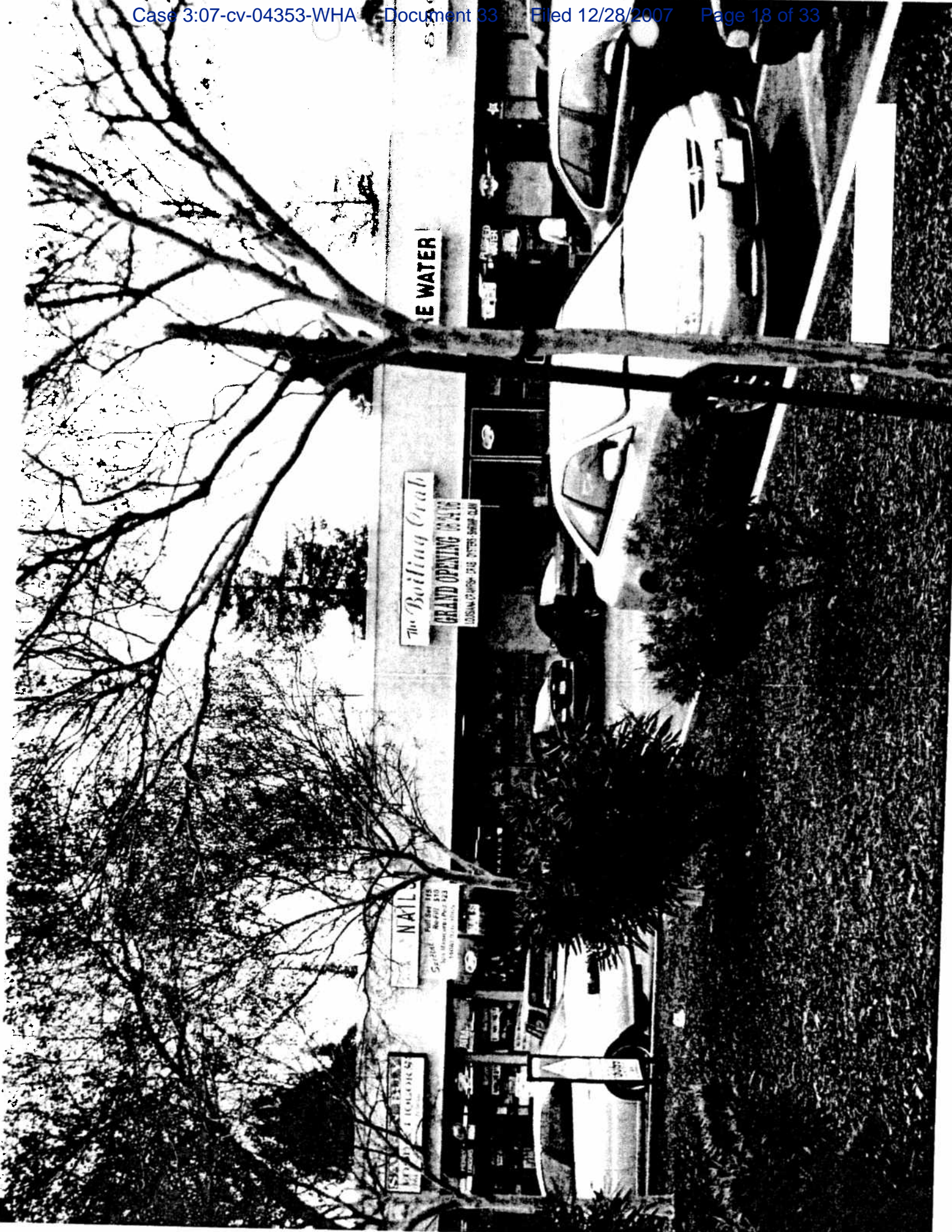
We are hopeful that you are willing to work with us to reach an amicable resolution of this matter. Nothing contained in this letter constitutes an express or implied waiver of any right or remedy, all of which are expressly reserved.

Sincerely,



Michael W. De Vries
of LATHAM & WATKINS LLP

Enclosures (photographs)



The Rolling Crab

GRAND OPENING 06 24 06

LOUISIANA CRAYFISH - CRAB - OYSTERS - SHRIMP - CLAM

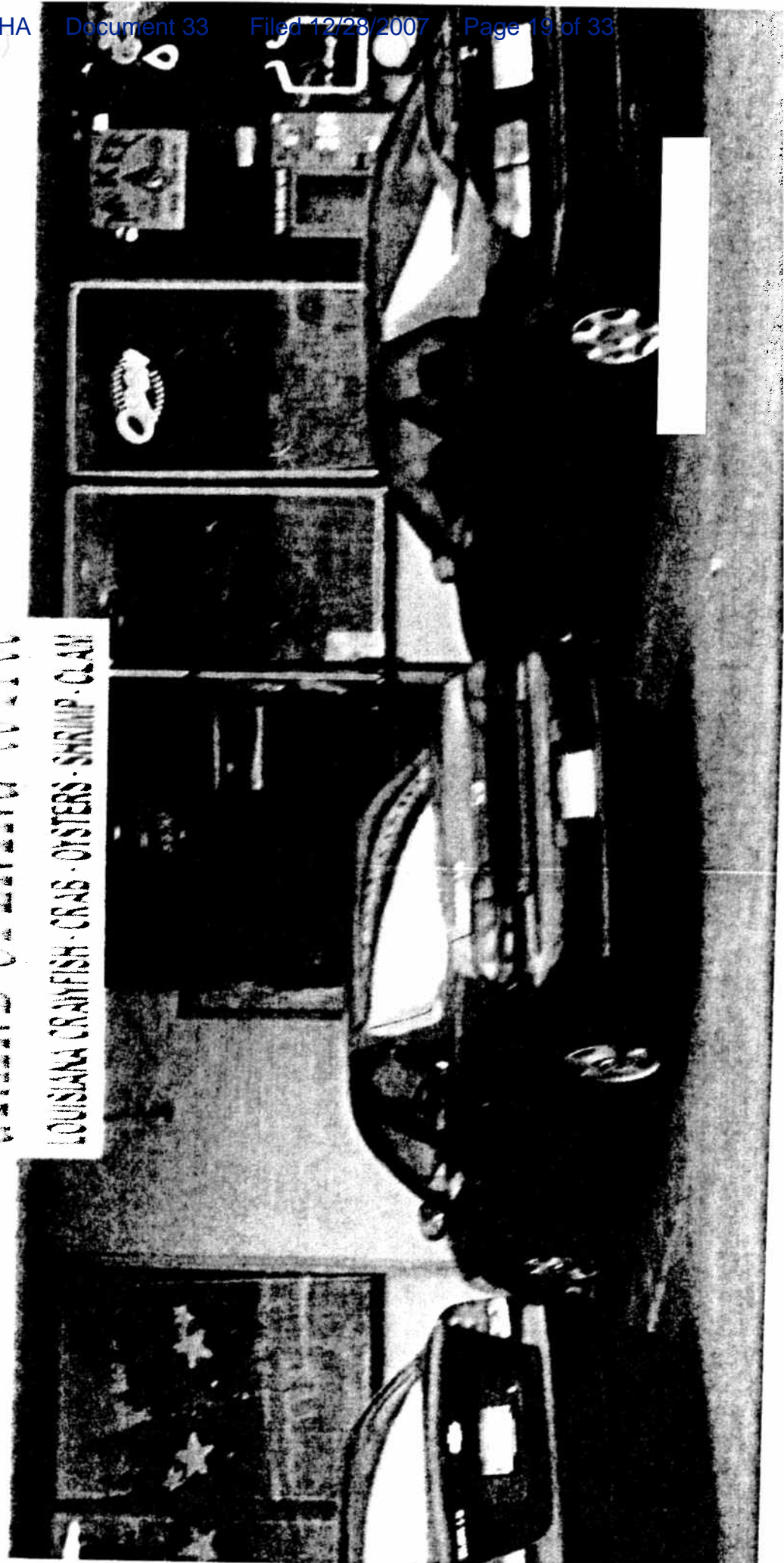


EXHIBIT E

Michael De Vries
Attorney
Direct Dial: (714) 755-8170
mike.devries@lw.com

650... n Center Drive, 20th Floor
Costa Mesa, California 92626-1925
Tel: +714.540.1235 Fax: +714.755.8290
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Frankfurt Orange County
Hamburg Paris
Hong Kong San Diego
London San Francisco
Los Angeles Shanghai
Madrid Silicon Valley
Milan Singapore
Moscow Tokyo
Munich Washington, D.C.

July 23, 2007

VIA MESSENGER

Mr. Kevin Vu
d/b/a "The Boiling Crab"
393 N. Capitol Ave.
San Jose, CA 95133

Re: **Trademark Infringement – THE BOILING CRAB trademark**

Dear Mr. Vu:

Please find enclosed an additional copy of my letter to you dated May 22, 2007, which was sent to you via Certified Mail on that date and via Federal Express on July 16, 2007. Your prompt attention to this matter is requested. If you fail to respond to our May 22 letter and agree to the reasonable demands contained therein by August 5, 2007, we will assume you have no intention to do so and will proceed accordingly.

Nothing contained in this letter constitutes an express or implied waiver of any right or remedy, all of which are expressly reserved.

Very truly yours,



Michael Woodrow De Vries
of LATHAM & WATKINS LLP

Enclosure

Michael Woodrow DeVries
Direct Dial: (714) 755-8170
mike.devries@lw.com

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Costa Mesa, California 92626-1925
Tel: (714) 540-1235 Fax: (714) 755-8290
www.lw.com

LATHAM & WATKINS LLP

May 22, 2007

VIA CERTIFIED MAIL

Mr. Kevin Vu d/b/a "The Boiling Crab"
393 N. Capitol Ave.
San Jose, CA 95133

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File No. 043376-0000

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LATHAM & WATKINS LLP

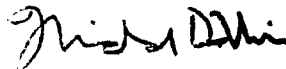
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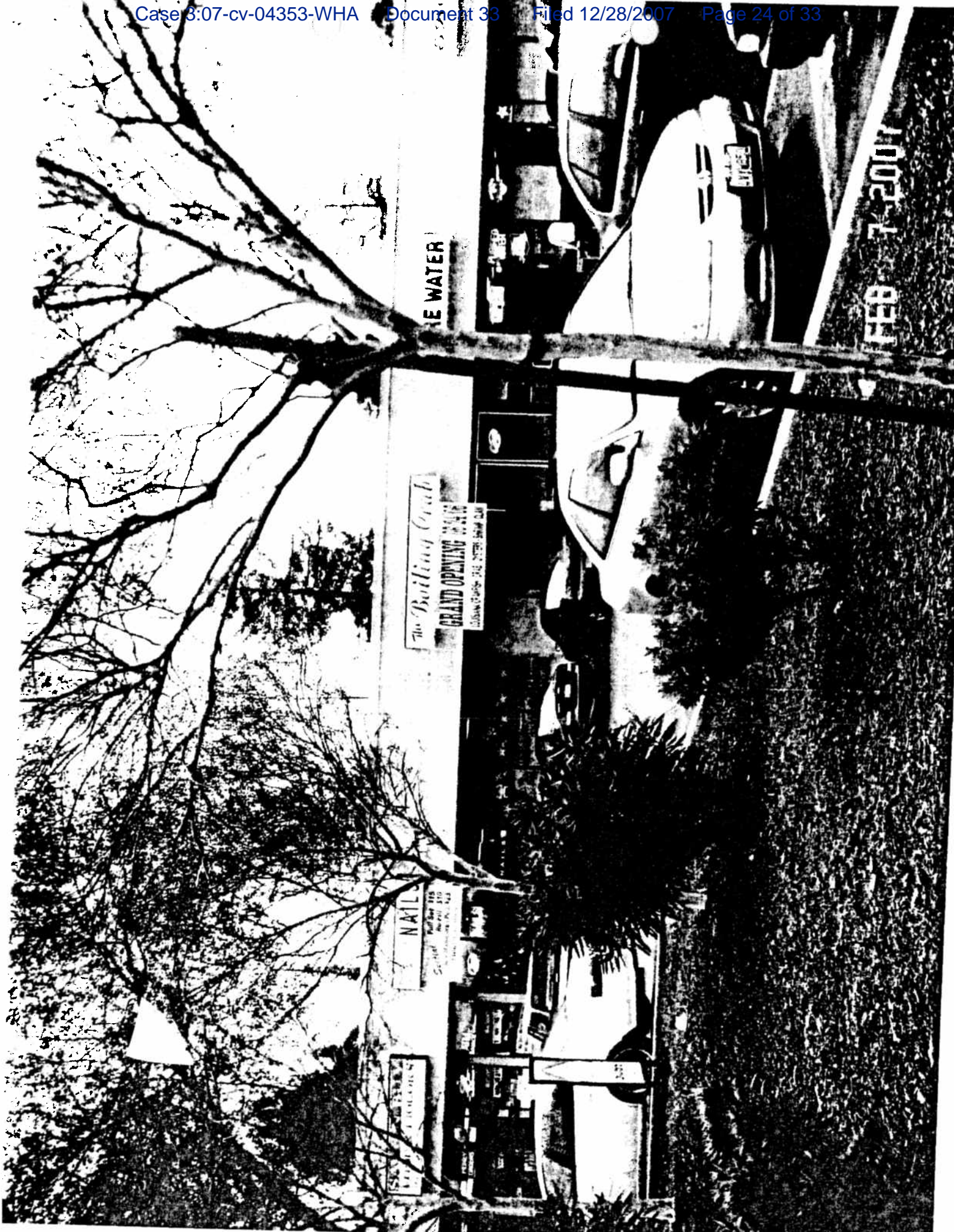
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Sincerely,



Michael W. De Vries
of LATHAM & WATKINS LLP

Enclosures (photographs)



GRAND OPENING 02 07 07

LOUISIANA CRABFISH - CRAB - OYSTERS - SHRIMP - CLAM

FEB 7 2007

EXHIBIT F

Search for (e.g. taco, salon, Max's)

Near (Address, City, State or Zip)

Los Angeles, CA

The Boiling Crab

based on 3 reviews

Categories: Cajun/Creole, Seafood [Edit]

San Jose, CA 95133



Add Photos

Edit Business Info

Send to Phone

Link to This Page

Is this your business? Get Involved!

Send to Friend

Bookmark

Write a Review

Print version

3 Reviews

First to Review



Kenny W.

Sort by Relevance



Jenn T.
Reviews
Written: 141

based on 3 reviews

08/09/2006

We came here since the concept, which has become pretty popular in southern cali, was pretty new/unique to the south bay area. I came with a group of 8, including Kenny W. whose review pretty much summed it up. This place is run by Vietnamese. I would have to add that its quite a bit of work eating here for the amount of food that actually ends up in your stomach. Utensils are not required as everything can (and probably will be) eaten with just your hands. Paper plates, butcher paper covered tables, and plastic bibs provide most of the decor.

I asked one of the staff, and she claimed that this place is not associated with the popular Boiling Crab in LA which has better reviews: <http://www.yelp.com/biz/>. I also asked about how the seafood is cooked: steamed in pots with seasonings - not in those plastic bags they give you the food in.

Summary - there's really nothing special about this place... you can probably do the same at home for cheaper.

Prices as of 8/8/2006:

- \$0.50 for sausage or corn
- \$10/lb for crab
- \$8/lb for crawfish
- ... i have the menu at home... will be back to update the rest of the prices

Bookmark

Send to a Friend



Katie W.
Reviews
Written: 23

based on 3 reviews

09/29/2006

First off, this place should be called, "The Boiling Water" because they NEVER HAVE CRABS. The first time I went here was a Friday night; there were barely any customers and yet they were OUT OF CRABS. The second time was a Sunday afternoon, no customers, again OUT OF CRABS. Third time was a Thursday night - surprise, surprise, OUT OF CRABS!

I only stayed the first time to try the other items on the menu. Everything is overpriced and boiled & served in a plastic bag. Crawfish was ok, shrimp was below avg, corn (3") and sausage (1/3 of a hotlink) was boiled in the same bag as the shrimp. Their "cajun style" sauce consists of oil and cajun seasoning from your local market (try Zataran's, its much better).

This horrible experience was due to my stupidity. I kept coming back because I thought they serve crabs, but they don't.

- This place has been open for a few months. I believe they're planning to close at any moment because they don't believe in keeping any crabs in-stock. They like to turn away customers before having any business. You might think they were out of crabs because they sold out, but in reality, they're just too cheap to keep any in-stock.

I rated them 1 star because I had to (yelp doesn't let you rate 0 stars).

[Bookmark](#)[Send to a Friend](#)

Kenny W.
Reviews
Written: 46



08/09/2006

crawfish cajun style. i believe their crawfish is freshwater so its just not the same. there was nothing spectacular about the shrimp. it was spicy stuff but nothing beyond that, not quite cajun. \$10/lbs for the crab is pretty bad value. quality of the seafood is subpar for the price. we ended up forking over \$20 each but in the end, we were still hungry and had to hit the wienerschnitzel next door.

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EXHIBIT G

From: john nguyen [mailto:vu2345678@yahoo.com]

Sent: Monday, September 24, 2007 8:11 AM

To: DeVries, Mike (OC)

Subject: RE: Sinhdarella, Inc. v. Kevin Vu

HI Mr Devries

I wont able to have the phone conversation with you today. I will call you back and let you know when. thank you.

kevin vu

Catch up on fall's hot new shows on Yahoo! TV. Watch previews, get listings, and more!

EXHIBIT H

From: john nguyen [mailto:vu2345678@yahoo.com]

Sent: Wednesday, October 31, 2007 11:22 AM

To: DeVries, Mike (OC)

Subject: Sinhdarella, Inc. v. Kevin Vu

Dear Mr Deviries

I dont destroy any evidence. Everything that u need will be here if u win the case.

The reason i am ignoring your questions and demands, bc i think u r crazy.

And stop giving me your ridiculous demand about the Boiling Crawfish. Do whatever u want to do if u think u are right. By the way, while u are at it, why dont u have Walmart sues Walgreens and Kmart.

Now, are you cooperating with me about the phone conference for the 26f report, if not then better prepare for a long phone conference. I am trying to help u make this thing quick and short so we can meet at the court. Like i said, i dont know much about law, but we both can work it out. Would u rather have me hire a attorney to deal with u. I told you, I dont have much money. And if you win, part of my money will have to pay for my attorney. As a result u will get less money at the end.

kevin vu

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PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 650 Town Center Drive, 20th Floor, Costa Mesa, CA 92626-1925.

On **December 28, 2007**, I served the following document described as:

**DECLARATION OF MICHAEL W. DE VRIES IN SUPPORT OF PLAINTIFF
SINH DARELLA, INC.'S MOTION FOR PRELIMINARY INJUNCTION**

by serving a true copy of the above-described document in the following manner:

BY U.S. MAIL

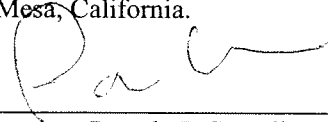
I am familiar with the office practice of Latham & Watkins LLP for collecting and processing documents for mailing with the United States Postal Service. Under that practice, documents are deposited with the Latham & Watkins LLP personnel responsible for depositing documents with the United States Postal Service; such documents are delivered to the United States Postal Service on that same day in the ordinary course of business, with postage thereon fully prepaid. I deposited in Latham & Watkins LLP' interoffice mail a sealed envelope or package containing the above-described document and addressed as set forth below in accordance with the office practice of Latham & Watkins LLP for collecting and processing documents for mailing with the United States Postal Service:

Christopher Hays, Esq.
Law Offices of Christopher Hays
One Embarcadero Center, Suite 500
San Francisco, California 94111

Attorneys for Defendant
Kevin Vu

I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **December 28, 2007**, at Costa Mesa, California.



Pamela J. Carvalho